IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 44 OF 2004

Beverages Venture Limited,
a Company registered under
the Companies Act, 1956,
having its Registered Office
at Arlem, Raia, Salcete, Goa. ... Appellant

versus

Prashant Pandurang Kavade,
s/o Shri Pandurang Tawade,
r/o H. No.E-126, Near Zari,
Mala, Panaji, Goa. ... Respondent

Mr. S. G. Bhobe, Advocate for the Appellant.

Mr. D. Pangam, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 15TH SEPTEMBER, 2006.

ORAL JUDGMENT

This is complainant's appeal against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881 by Order dated 17-3-2004 of the learned J.M.F.C.,

Margao. The subject matter of the complaint was three cheques, the details of which are as follows:-

Cheque Number	Date	Amount
0463167	16-03-2000	37,950.00
0463168	18-03-2000	46,115.00
0463169	21-03-2000	41,193.00
		1,25,258.00

2. As per the complainant the said cheques were deposited with the Syndicate Bank, Margao and were dishonoured by the Bankers of the accused on the grounds "Exceeds Arrangement", as informed to the complainant on 18-8-2000. The complainant addressed a statutory notice to the accused on 29-8-2000 by registered post which the accused received on 4-9-2000 but did not reply nor comply with the same. The complainant therefore filed a complaint and in support thereof examined its Power of Attorney namely Vivian D'Souza. It appears that there was a change in the management of the Company when its business was taken

over by M/s. Sellwell Foods and Beverages Pvt. Ltd. from 13-6-2000. The complainant had presented the said cheques for payment because they were found by them after the management had changed. The accused examined himself and also the Manager of the Bank. The accused stated that he had made payment in respect of the said cheques by demand draft. In fact, there is no dispute that the complainant by notice dated 27-3-2000 called upon the accused to pay the amount of two cheques namely dated 18-3-2000 for Rs.37,950/- and dated 21-3-2000 for Rs.46,115/-. On behalf of the complainant the accused was informed that in future he was required to make the payment by demand drafts. In fact, the accused was taking regular supplies from the complainant-Company on credit and was making payments from time to time. After the receipt of the said notice dated 27-3-2000 the accused promptly paid the complainant by demand drafts the said sums of Rs.37,950/- on 29-3-2000 and Rs.46,115/- on 3-4-2000. The accused also paid by demand draft a sum of Rs.41,193/- on 7-4-2000. After the change of the management of the complainant-Company the second notice dated 29-8-2000 came to be issued to the accused which was neither replied nor complied.

3. The learned Magistrate in her Order dated 17-3-2004 observed that there might have been further liability of the accused towards the complainant-Company as per the statement of accused(Exh.41) which was produced by the accused but that liability was not the subject matter of the complaint and the liability under the complaint was limited to the amounts of the three cheques which were produced by the complainant at Exh.29 colly. and the amount of which was seen paid by the accused to the complainant-Company by way of demand drafts well in advance before the notice of demand was issued.

4. There is no dispute that the accused in his cross-examination admitted that the statement produced by him correctly showed that on 26-4-2000 an amount of Rs.2,22,184.59 was due and payable by the accused to the complainant out of which he had paid Rs.50,000/- by two separate cheques of Rs.25,000/- each. In the above background, Mr. S. G. Bhobe, the learned Counsel on behalf of the complainant, submits that the accused had retained the subject cheques, inspite of payment made by the accused by demand drafts towards future liability of the accused towards the said Company and as such on behalf of

the Company the said cheques were presented again for payment and were dishonoured. Mr. Bhobe submits that since the said cheques were not asked by the accused to be returned, the complainant had an implied authority to present them again for payment towards the liability which the accused had towards the Company. On the other hand, Mr. D. Pangam, the learned Counsel on behalf of the accused has submitted that as far as the cheques which are the subject matter of notice dated 27-3-2000 are concerned the same could not have been presented again and in respect of the same, the accused ought to have proceeded in filing the complaint for the cause of action had arisen in favour of the complainant to prosecute the accused after the said notice was not complied with. In support of the said submission Mr. D. Pangam has referred to the case of **Sadanandan Bhadran** v. **Madhavan Sunil Kumar** ((1998) 6 SCC 514) wherein the Apex Court has stated that a cause of action arises only once and that is after the non compliance of the notice issued under clause(b) of Section 138. Reliance is also placed to the same effect of another decision of the Supreme Court in **Prem Chand Vijay Kumar** v. **Yashpal Singh and another** ((2005) 4 SCC 417). The learned Counsel Mr. Pangam has further submitted, and this is

with reference to all the three cheques, that the said three cheques were given towards specific liability which has already been met by paying the complainant by way of demand drafts. Mr. Pangam has further submitted that in case the said cheques were allowed to be retained by the complainant towards future liability then the complainant ought to have pleaded this fact in the complaint. Mr. Pangam submits that just because the cheques had remained with the complainant it did not mean that the complainant was free to present them again in discharge of other liability of the accused. In this regard, the learned Counsel Mr. Pangam has referred to a judgment of this Court in Criminal Application Nos.561/1998 and 562/1998 reported in 2001(12) LJSOFT 58/2001 ALL MR(CRI) 2281.

5. In my view, the conclusion arrived at by the learned J.M.F.C. could not be faulted. From the facts stated by the accused and his witnesses it appears that the cheques issued by the accused were towards payment of specific bills raised against him and after letter dated 27-3-2000 the accused made payment by demand drafts as desired on behalf of the complainant and here again of sums corresponding to the said cheques. As far as

the two cheques dated 16-3-2000 and 18-3-2000 are concerned, the complainant could not have presented them again. The only option of the complainant, if at all, was to have prosecuted the accused within a period of thirty days and the complainant did not do the same presumably because the complainant had already received the amount due on the said two cheques. As far as the payment by third cheque is concerned dated 21-3-2000 the demand draft dated 7-4-2000 corresponds to the specific amount of the said cheque. In case the accused had allowed the Company to retain the subject cheques to present for payment towards other liability then the complainant ought to have specifically pleaded and proved the said fact which was not done in this case and it does appear that the said three cheques were presented again because the complainant himself did not know that the payments were received from the accused by way of demand drafts.

6. In the light of the above, I find there is no merit in this appeal. Consequently, the same is hereby dismissed.

N. A. BRITTO, J.

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